SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 262

MRS. MARTHA BAILEY CRICHTON,

Petitioner,

—VS.—

SUCCESSION OF POWELL CRICHTON (MISS MARGARET S. HEMINGWAY, ANCILLARY TESTAMENTARY EXECUTRIX), MRS. GLORIA CRICHTON McGEHEE and POWELL CRICHTON, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

PETITION FOR REHEARING

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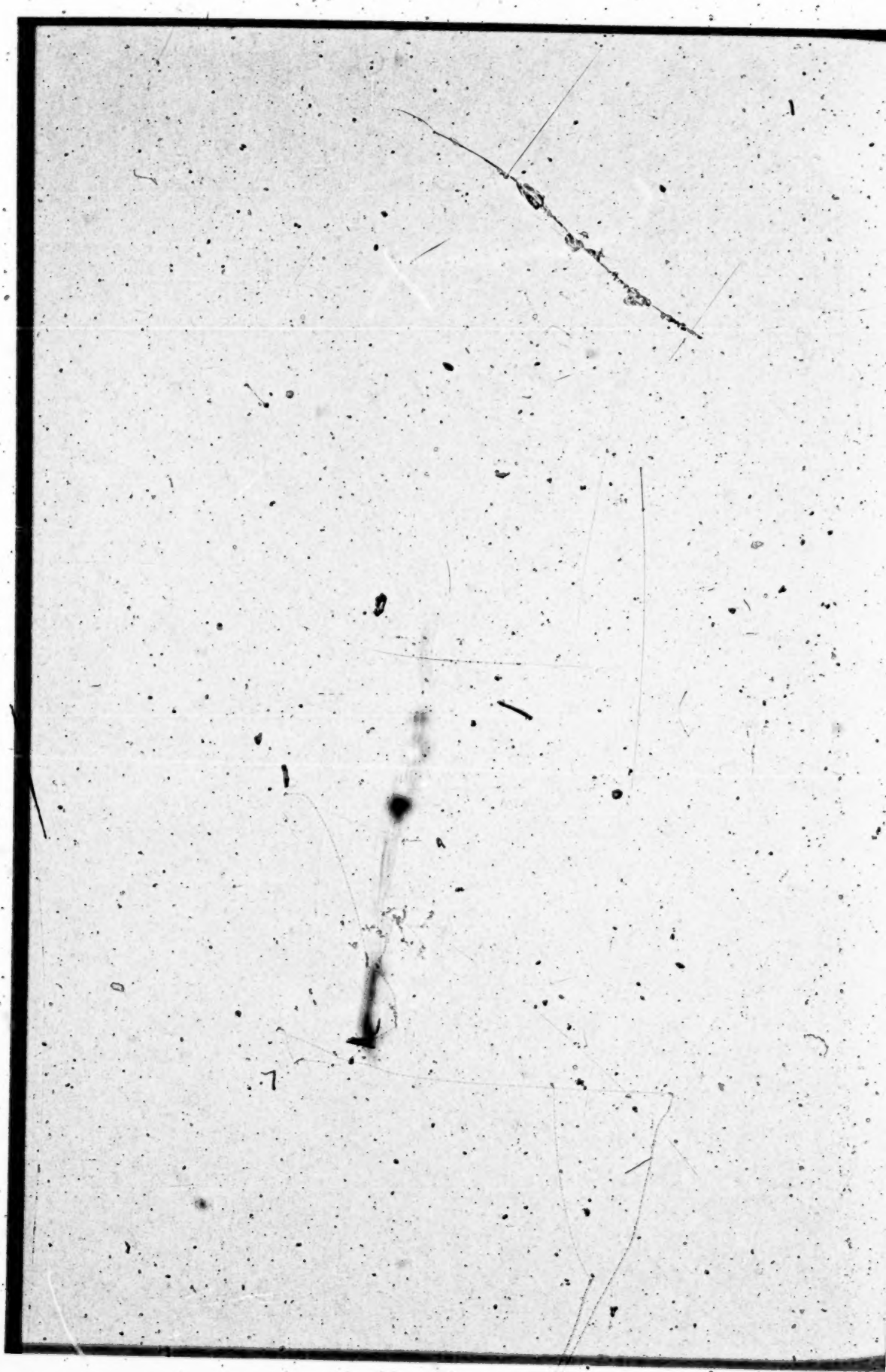

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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on November 16, 1970, and (2) granting the petition. As grounds for this motion, Petitioner states the following:

This case presents a novel and vitally important question of concern not only to the residents of community property states but also to those owning property therein, and in-

volves the ownership of intangible movable properties (bank deposits, U.S. Treasury bonds, corporate stocks, etc.) all of which are situated in the community property state of Louisiana, all of which were acquired during the period of decedent's marriage to Petitioner and which under Louisiana law, and past decisions of this Court, constituted vested community property in both husband and wife. Contrary to the rule of law applicable to real property in the same circumstances, by which one-half interest was conceded to Petitioner, the courts of New York found that Petitioner had no interest in the intangible movable property in Louisiana and the Louisiana Court felt bound to accord full faith and credit to the judgment of the New York Court.

The novel question presented is whether Petitioner is retroactively deprived of property vested under a community property statute, without compensation, contrary to due process and the equal protection of the law, when, after the Courts of a non-community property state determine, contrary to past decisions of this Court and to the community property statute as interpreted by the Courts of Louisiana, that no vested property right is involved, the Louisiana Courts, though in disagreement with the finding, rule that they are bound by the full faith and credit clause to follow the decree of the non-community property state.

I. Prior Decisions Of This Court Clearly Hold That Both Husband And Wife Have A Present Vested Interest In Community Property.

In *Bender* v. *Pfaff*, 282 U.S. 127, 132 this Court held that in Louisiana, under the community property law, the wife has a present vested interest in community property equal to that of her husband. This Court is recognizing the wife's

ownership, under the Louisiana law, of one-half of the community property and of the income therefrom, stated:

> "As in the case of other states, whose law we have discussed in connection with this matter[1] . . ., *each spouse may by will dispose of only his or her one-half of the community and is powerless to affect the other's half.* In case of death intestate one-half descends to the heirs of the decedent, and the other spouse is powerless to prevent this." (Emphasis added.)

The Fifth Circuit Court of Appeals, in the case of *Henderson's Estate* v. *Commissioner of Internal Revenue*, 155 F. (2d) 310, 312 (5th Cir. 1946) stated:

> "There is no use in comparing or distinguishing decisions dealing with the statutory laws of other community-property states; both the Supreme Courts of Louisiana[2] and of the United States have dealt explicitly with the character of the wife's community interest in Louisiana. *Both courts have held that her one-half interest is not a mere expectancy during the marriage but vests in her upon the acquisition of the property.* They have compared her interest to that of a partner in the property of a partnership, the affairs of which have been entrusted to a managing partner. *Upon the death of the husband her title is enhanced, not diminished.* By death

[1] In the companion cases to *Bender* v. *Pfaff* (*Hoe* v. *Sanborn*, 282 U.S. 101; *Goodell* v. *Koch*, 282 U.S. 118; and *Hopkins* v. *Bacon*, 282 U.S. 122), this Court also held that in the community-property states of Washington, Arizona, and Texas, as in Louisiana, *the wife has a vested property right in the community property equal to that of her husband*; see also *Warburton* v. *White*, 176 U.S. 484, 494; *Arnett* v. *Reade*, 220 U.S. 311.

[2] *Succession of Helis*, 226 La. 133, 75 So. 2d 221 (1954); *Azar* v. *Azar*, 239 La. 941, 120 So. 2d 485 (1960). See Petition p. 16.

the husband loses a power over property that he never owned, and the widow gains new powers over property that was already hers. This shift of power is substantial enough to be a rational basis for the levy of a federal estate tax." (Emphasis supplied.)

II. To Retroactively Deprive Petitioner Of Her Property Rights Without Compensation Contrary To The Community Property Laws Of Louisiana And Past Holdings Of This Court Presents The Novel Question "Must The Due Process And Equal Protection Clauses Give Way To The Superior Authority Of The Full Faith And Credit Clause."

The question before this Court involves the ownership of intangible movables (bank deposits, U.S. Treasury bonds, corporate stocks, etc.) all of which were acquired during the period of decedent's marriage to Petitioner and which under Louisiana law, and past decisions of this Court, constituted vested community property.

The New York Courts refused to recognize the applicability of the Louisiana community property law (L.R.C.C. Art. 2400) and held that no community of acquets and gains existed (Appendix 46a, 52a).

Nevertheless, the Court of Appeals, Second Circuit State of Louisiana (Appendix 30a), affirmed by the Supreme Court of Louisiana (Appendix 33a), stated:

> "In view of the clear language of Article 2400 and the preceding authorities *we are convinced that Mrs. Crichton was entitled as a substantive right to a one-half interest in the movable property left by the deceased under Louisiana Law.* However, as a consequence of the Full Faith and Credit Clause of the Federal Constitution *we are bound to hold* that the judgment of the State of New York is entitled to res judicata effect in Louisiana." (Emphasis supplied.)

The Full Faith and Credit Clause as applied by the Louisiana Courts has thus been made to operate retroactively and to divest Petitioner of rights of ownership and possession in intangible movable properties which had already vested in her under the law of the state where the properties were, in fact, located.

This Court is the only forum vested with the power to determine whether the rights guaranteed by the Fourteenth Amendment must give way in the circumstances presented to the superior authority of the Full Faith and Credit Clause.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari and reply to respondents brief in opposition, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

/s/ CHARLES S. RHYNE
Counsel for Petitioner